



FREDERICK COUNTY GOVERNMENT

FREDERICK COUNTY ETHICS COMMISSION Office of the County Attorney

Jan H. Gardner
County Executive

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DRAFT: 3/15/16

FREDERICK COUNTY ETHICS COMMISSION STANDARD OPERATING PROCEDURES

I. Background

State law requires all Maryland counties to adopt public ethics laws related to conflicts of interest, financial disclosure and lobbying. The local conflict of interest and financial disclosure provisions for appointed officials and employees must be “similar” to the State Ethics ~~Ordinance~~Law, while the conflict of interest and financial disclosure provisions for elected officials must be “equivalent to or exceed” the State’s requirements for State officials. The local lobbying provisions must be “substantially similar” to the State law.

The Frederick County Ethics Commission was established in 1982, when the first Frederick County Ethics ~~Ordinance~~Law was enacted. ~~A new Ethics Ordinance was adopted in 2011. That The current~~ Ethics ~~Ordinance~~Law is located in Chapter 1-7.1 of the Frederick County Code ~~of Ordinances~~. (The Ethics ~~Ordinance~~Law may also be found on the County’s website at ~~http://www.frederickcountymd.gov/DocumentCenter/Home/View/1618.~~)

The Commission is made up of ~~five~~seven members and an alternate, all of whom are appointed by the County Executive for three-year staggered terms, subject to confirmation by the County Council. Members may not serve more than two full consecutive three-year terms. The Commission elects its own chairman.

II. Commission Responsibilities

The Ethics ~~Ordinance~~Law gives the Ethics Commission the following responsibilities:

- A. To devise, receive and maintain all forms required by the Ethics ~~Ordinance~~Law;
- B. To develop procedures and policies for advisory opinion requests, including the reconsideration of advisory opinions, and provide published advisory opinions to persons subject to the Ethics ~~Ordinance~~Law as to the applicability of the ~~Ordinance~~Law to them;
- C. To develop procedures and policies for the processing of complaints and to make determinations regarding complaints filed by any person alleging violation of the Ethics ~~Ordinance~~Law;
- D. To conduct a public information program regarding the purposes and application of the Ethics ~~Ordinance~~Law.

- E. To issue an annual report of compensation and spending in connection to lobbying activity by registered lobbyists.
- F. To certify by October 1 of each year to the State Ethics Commission that the County is in compliance with the requirements of State law for local elected officials.
- G. To make recommendations for changes to the Ethics ~~Ordinance~~Law when needed in order to comply with the State Ethics Law.
- H. To develop policies and procedures as needed to assist in implementing the Ethics ~~Ordinance~~Law.

III. County Attorney's Office Responsibilities

- A. To appoint an attorney to serve as the Commission's legal advisor;
- B. To serve as the repository for the Commission's records and files;
- C. To distribute and collect financial disclosure forms;
- D. To prepare minutes of Commission meetings; and
- E. To maintain and keep the Commission's web site current.

IV. Requests for Advisory Opinions and Requests for Exemptions

- A. The Ethics Commission issues Advisory Opinions to provide guidance on compliance with the requirements of the Ethics ~~Ordinance~~Law. Advisory Opinions are typically issued in response to requests from employees or their supervisors and are intended to serve as a guide to the persons immediately affected, as well as to others who may face similar questions in the future. The Ethics Commission may also issue Advisory Opinions as an alternative to formal enforcement action. (The enforcement options available to the Ethics Commission are found in §1-7.1-10 of the Ethics ~~Ordinance~~Law.)
- B. Requests are generally directed to the legal advisor.
- C. Requests should be made in writing. The request should contain the -person's name, signature, home and email addresses, telephone numbers, and a statement of the facts and circumstances giving rise to the request.
- D. The legal advisor will circulate each request to the members of the Commission, including the alternate member. Upon receipt of notice that a request has been received, each Commission member will promptly advise the legal advisor as to whether the request should be discussed at the next Commission meeting. The

person making the request or other persons with information material to the request may be invited to meet with the Commission, at the Commission's discretion.

- E. When the Commission makes a decision on the request, it will issue a written Advisory Opinion. The person who is the subject of the request will not be identified in the opinion. Copies of the opinion will be given to the subject of the request and the person making the request. The Advisory Opinion will also be placed on the Commission's website and included in the Advisory Opinion binder maintained by the Office of the County Attorney.
- F. As an alternative to section E above, when a request presents facts and raises issues that have been addressed in a previously issued Advisory Opinion, the Commission may transmit the prior Advisory Opinion as an expedited informal response to the request.
- G. The name of the person who is the subject of the Advisory Opinion should remain confidential.
- H. Meetings to discuss the application of the Ethics ~~Ordinance~~Law to requests for exemptions and requests for Advisory Opinions will be considered as administrative function meetings under the State Open Meetings Act and, as such, need not be open to the public.
- I. Responses to requests should generally be provided within 60 days of receipt of the request. The time for a response to the request may be extended, if necessary.
- J. [Insert provision on reconsideration of advisory opinions, including the deadline for making a request, what standards must be met for granting reconsideration and any notice requirements where the request for reconsideration does not come from the subject of the advisory opinion]

V. Complaints

The Ethics Commission only has the jurisdiction to consider violations of the specific provisions of the Ethics ~~Ordinance~~Law. General allegations that conduct is "unethical" cannot be considered unless the conduct would constitute a violation of the ~~Ordinance~~Law itself.

A. Requirements

- 1. Complaints must generally be made in writing. However, the Commission may allow an individual who wishes to make a complaint to meet in person with the Commission in lieu of making a written complaint.

2. Written complaints should contain the person's name, signature, home and email addresses, telephone numbers, and a statement of the facts and circumstances giving rise to the complaint.
3. The complaint must allege a violation of the Ethics ~~Ordinance~~Law on the part of an official or employee who is subject to the jurisdiction of the Ethics Commission.
4. Anonymous complaints will not be accepted.
5. The Commission may initiate a complaint on its own if deemed necessary by the Commission.

B. Outside legal counsel

If any matter coming before the Commission involves the County Executive or a County Council member, the Commission or the legal advisor must decide whether there is a conflict of interest on the part of the legal advisor due to the fact that the County Attorney is the attorney for the County Executive and the County Council and is employed by the County Executive. If the Commission believes that an "outside" attorney is needed to advise the Commission, it will need to employ "outside" counsel for that matter.

C. Notice to the parties of the filing of the complaint

1. Except as provided in section C.2, upon receipt of a complaint or the initiation of a complaint by the Commission, the Commission will notify the subject of the complaint that a complaint has been made and will provide that person with a copy of the complaint.
2. If a referral for a possible criminal investigation is made under section E.1 before an investigation is started, notice will not be given to the subject of the complaint until after the referral is resolved.

D. Confidentiality

1. Once a complaint is filed or initiated by the Commission, the proceedings, meetings, and activities of the Commission and staff in connection with the complaint shall be conducted in a confidential manner. The Commission, its staff, and the parties should not disclose any information relating to the complaint, including the identity of the subject of the complaint or the person making the complaint.
2. The complaint remains confidential until the Commission finds that the Ethics ~~Ordinance~~Law has been violated or refers the matter for prosecution.

3. If the Commission finds that there has been no violation of the Ethics ~~Ordinance~~Law, it will issue a written decision. The name of the individual who was the subject of the complaint will remain confidential and the person's name will not be included in the decision.

E. Procedures

1. If the allegations in the complaint or the facts obtained during the Commission's investigation suggest that criminal conduct may have occurred, the Commission may, at its discretion, refer the matter to the Office of the Attorney General, the State Prosecutor, or the State's Attorney for a determination as to whether a criminal investigation is warranted. Once a referral for possible criminal prosecution is made, the Commission will not act on the complaint until the referral is resolved.
2. When the Commission receives a complaint, the Commission will make a preliminary determination as to how the complaint will be handled. The options available to the Commission include, but are not limited to, the following:
 - a. If the Commission finds that the facts alleged in the complaint would not constitute a violation of the Ethics ~~Ordinance~~Law, the Commission may dismiss the complaint without further investigation.
 - b. The Commission may meet with the complainant and/or the subject of the complaint on an informal basis to ascertain the facts related to the ~~complaint~~ and make a decision on the complaint. If at any time the Commission determines that a hearing is warranted, the Commission may schedule a hearing on the complaint.
 - c. The Commission may schedule a hearing on the complaint.
3. Decisions on complaints should generally be issued within 90 days of receipt of the complaint. The time for a decision on a complaint may be extended, if necessary.
4. Except as provided in Section V.G.3, ~~The~~ the Commission will decide all matters by a majority vote. If one of the members is absent or does not participate in the matter before the Commission, the alternate will vote in the member's place.

F. Right to legal representation and participation

1. Before making a decision adverse to the subject of the complaint, the subject of the complaint has the right to be heard by the Commission.
2. The subject of the complaint has the right to be represented by legal counsel in his meetings with the Commission and in any hearings conducted by the Commission. The subject of the complaint is responsible for payment of any legal fees associated with the attorney's representation.

G. Oaths and subpoenas

1. The Commission may administer oaths to persons presenting testimony or evidence to the Commission.

2. The Commission may issue subpoenas to require any person to respond under oath to written questions and issue subpoenas for the attendance of witnesses to testify or to produce verified copies of records or other tangible objects.

3. A subpoena may only be issued upon the affirmative vote of six members after a majority of the Commission determine that a complaint has merit.

4. County officials and employees are expected to comply with all subpoenas issued by the Commission.

5. A subpoena issued by the Ethics Commission may be judicially enforced.

H. Decisions

1. If the Commission decides to dismiss the complaint or makes a decision on the merits of the complaint, it should give written notice of the dismissal to the complainant and to the subject of the complaint.
2. If the Commission finds that the person who is the subject of the complaint has violated the Ethics ~~Ordinance~~Law, the written decision should include findings of fact and conclusions of law for each violation alleged in the complaint. The name of the subject of the complaint must also be included in the Commission's written decision.
3. If the Commission finds that the person who is the subject of the complaint has violated the Ethics ~~Ordinance~~Law, it may take such steps as allowed in the ~~Ordinance~~Law.

4. Written decisions of the Commission should be signed by the Chairman or other designated member on behalf of the Commission.

VI. Financial Disclosure Forms

- A. The financial disclosure forms are drafted by the legal advisor to the Commission and approved by the Commission members.
- B. The County Attorney's Office sends the annual financial disclosure forms out around April 1 of each year to the officials and employees designated in the Ethics ~~Ordinance~~Law.
- C. The annual financial disclosure forms are to be completed and returned to the County Attorney's Office by April 30 each year. In practice, it may take a few weeks or longer before all of the forms are returned. When this happens, the County Attorney's Office will send reminders and notify the supervisors of the persons who have not returned their forms, as deemed necessary.
- D. The Commission will review the completed financial disclosure forms and take appropriate action based on the information contained in the forms. The Commission may ask the legal advisor to obtain additional information if the information provided is incomplete, unclear or raises questions under the Ethics ~~Ordinance~~Law.

VII. Guidelines For Use in Conflict of Interest Situations

The following guidelines will be used in making decisions on conflict of interest questions brought to the Commission:

- A. Except where a direct financial gain can be identified or a direct employer-employee business relationship or a family relationship exists, as defined in the Ethics ~~Ordinance~~Law, the Commission will not view indirect relationships as de facto conflicts of interest. The Commission will, however, consider the evidence presented when personal gain is alleged.
- B. Officials are expected to "read their hearts" prior to becoming involved in a hearing or voting on a case. If the official recognizes that he cannot render a fair and impartial decision based on the facts presented, he should remove himself from the case.
- C. If the official recognizes a conflict, or the appearance of a conflict, the official should state this conflict before the hearing and physically remove himself from the hearing room and avoid discussion of the case with fellow officials until a decision is made.

VIII. Educational Efforts

A short summary of the Ethics ~~Ordinance~~Law appears in an appendix to the Personnel Rules handbook given to all employees. In addition, opinions and decisions of the Commission appear on the Commission's web site, as do the minutes of Commission meetings. Other programs are also offered as the Commission deems appropriate.

Adopted on this ~~14th~~____ day of ~~January~~____, 201~~5~~6.

/s/

~~Gwen K. Romack~~Brian Duncan, Chairman